

Office of the Secretary of Defense

§ 104.3

of the Active Forces (other than Military Advisory Assistance Group or attached personnel) within their boundaries.

(b) Prior to authorizing such training, the Secretaries of the Military Departments will instruct the attaches representing their respective Departments to inform the U.S. Ambassador and the appropriate officials of the foreign government of the intent to conduct such training. If the foreign government objects, the Secretaries of the Military Departments will furnish all the facts and their recommendations to the Secretary of Defense.

(c) This policy does not prohibit the conduct of inactive duty training, such as correspondence courses, in those sovereign foreign countries in which the United States does not maintain Active Forces and where an agreement exists between the United States and the sovereign foreign nation concerned for the conduct of such training.

(d) This policy does not prohibit a limited duration the augmentation of Defense Attache Offices by attache reservists (mobilization augmentees or mobilization designees) during periods of local emergencies or for short-term (less than 30 days) training periods, provided the provisions of paragraph (b) of this section are respected. Attache reservists who are available, possess the expertise required, and reside temporarily in foreign countries, shall be utilized to the maximum extent to augment Defense Attache Offices before the continental United States-based attache reservists are utilized.

PART 104—CIVILIAN EMPLOYMENT AND REEMPLOYMENT RIGHTS OF APPLICANTS FOR, AND SERVICE MEMBERS AND FORMER SERVICE MEMBERS OF THE UNIFORMED SERVICES

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APPENDIX A TO PART 104—CIVILIAN EMPLOYMENT AND REEMPLOYMENT RIGHTS, BENEFITS AND OBLIGATIONS FOR APPLICANTS

FOR, AND SERVICE MEMBERS AND FORMER SERVICE MEMBERS OF THE UNIFORMED SERVICES

APPENDIX B TO PART 104—SAMPLE EMPLOYER NOTIFICATION OF UNIFORMED SERVICE

AUTHORITY: 10 U.S.C. 1161.

SOURCE: 62 FR 3466, Jan. 23, 1998, unless otherwise noted.

§ 104.1 Purpose.

This part:

(a) Updates implementation policy, assigns responsibilities, and prescribes procedures for informing Service members who are covered by the provisions of 38 U.S.C chapter 43 and individuals who apply for uniformed service, of their civilian employment and reemployment rights, benefits and obligations.

(b) Implements 38 U.S.C. chapter 43, which updated, codified, and strengthened the civilian employment and reemployment rights and benefits of Service members and individuals who apply for uniformed service, and specifies the obligations of Service members and applicants for uniformed service.

§ 104.2 Applicability.

This part applies to the Office of the Secretary of Defense; the Military Departments, including the Coast Guard when it is not operating as a Military Service in the Department of the Navy by agreement with the Department of Transportation; the Chairman of the Joint Chiefs of Staff; and the Defense Agencies (referred to collectively in this part as “the DoD Components”). The term “Military Departments,” as used in this part, refers to the Departments of the Army, Navy, and Air Force. The term “Secretary concerned” refers to the Secretaries of the Military Departments and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a Service in the Department of the Navy. The term “Military Services” refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

§ 104.3 Definitions.

Critical mission. An operational mission that requires the skills or resources available in a Reserve component or components.

Critical requirement. A requirement in which the incumbent possesses unique knowledge, extensive experience, and specialty skill training to successfully fulfill the duties or responsibilities in support of the mission, operation or exercise. Also, a requirement in which the incumbent must gain the necessary experience to qualify for key senior leadership positions within his or her Reserve component.

Escalator position. This is established by the principle that the returning Service member is entitled to the position of civilian employment that he or she would have attained had he or she remained continuously employed by that civilian employer. This may be a position of greater or lesser responsibilities, to include a layoff status, when compared to the employees of the same seniority and status employed by the company.

Impossible or unreasonable. For the purpose of determining when providing advance notice of uniformed service to an employer is impossible or unreasonable, the unavailability of an employer or employer representative to whom notification can be given, an order by competent military authority to report for uniformed service within forty-eight hours of notification, or other circumstances that the Office of the Assistant Secretary of Defense for Reserve Affairs may determine are impossible or unreasonable are sufficient justification for not providing advance notice of pending uniformed service to an employer.

Military necessity. For the purpose of determining when providing advance notice of uniformed service is not required, a mission, operation, exercise or requirement that is classified, or a pending or ongoing mission, operation, exercise or requirement that may be compromised or otherwise adversely affected by public knowledge is sufficient justification for not providing advance notice to an employer.

Non-career service. The period of active uniformed service required to complete the initial uniformed service obligation; a period of active duty or full-time National Guard duty that is for a specified purpose and duration with no expressed or implied commitment for continued active duty; or participation

in a Reserve component as a member of the Ready Reserve performing annual training, active duty for training or inactive duty training. Continuous or repeated active uniformed service or full-time National Guard duty that results in eligibility for a regular retirement from the Armed Forces is not considered non-career service.

Officer. For determining those Service officials authorized to provide advance notice to a civilian employer of pending uniformed service by a Service member or an individual who has applied for uniformed service, an officer shall include all commissioned officers, warrant officers, and non-commissioned officers authorized by the Secretary concerned to act in this capacity.

Uniformed service. Performance of duty on a voluntary or involuntary basis in the Army, the Navy, the Air Force, the Marine Corps or the Coast Guard, including their Reserve components, when the Service member is engaged in active duty, active duty for special work, active duty for training, initial active duty for training, inactive duty training, annual training or full-time National Guard duty, and, for purposes of this part, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform such duty.

§ 104.4 Policy.

It is DoD policy to support non-career service by taking appropriate actions to inform and assist uniformed Service members and former Service members who are covered by the provisions of 38 U.S.C. chapter 43, and individuals who apply for uniformed service of their rights, benefits, and obligations under 38 U.S.C. Chapter 43. Such actions include:

(a) Advising non-career Service members and individuals who apply for uniformed service of their employment and reemployment rights and benefits provided in 38 U.S.C. chapter 43, as implemented by this part, and the obligations they must meet to exercise those rights.

(b) Providing assistance to Service members, former Service members and